

**REMARKS**

Claims 42-79 remain in this application. Claims 42, 53, and 67 have been amended. Claim 79 has been added. No claims have been cancelled. The Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

**35 U.S.C. §103(a) Rejection – Dutta and Schneider**

The Examiner has rejected claims 42-45, 48-50, 52-56, 60-61, 63, 65-70, 75-76 and 78 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application No. 2002/0073204 issued to Dutta et al. (hereinafter "Dutta") in view of U.S. Patent No. 6,687,753 issued to Schneider (hereinafter "Schneider").

Applicants respectfully submit that: (1) Dutta and Schneider should not be combined; and (2) any combination of Dutta and Schneider, which combination does not even seem appropriate, still does not teach or suggest all of the limitations of the independent claims.

**(1) Dutta and Schneider Should Not Be Combined**

Firstly, Dutta and Schneider should not be combined. Dutta and Schneider are from non-analogous arts. Dutta pertains to peer-to-peer data networks (see e.g., the Title). In contrast, Schneider pertains to client server computer networks (see e.g., the abstract and the Field of the Invention). Schneider does not even mention the word "peer". Accordingly Dutta and Schneider are from non-analogous arts. As discussed in the MPEP 2141.01(a), to rely on a reference under 35 U.S.C. 103, it must be analogous prior art. *"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not,*

*then be reasonably pertinent to the particular problem with which the invention was concerned."* In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). The problems addressed in the client server computer networks of Schneider would not logically have commended itself to an inventors attention when he/she was considering the problems addressed in the peer to peer data networks of Dutta. The Examiner has failed to provide sufficient justification why methods that are useful in a client-server environment would be useful in a peer-to-peer environment. An inventor could not possibly be aware of every teaching in every art. In re Wood, 599 F.2d 1032, 202 USPQ 171, 174 (C.C.P.A. 1979). Accordingly, Dutta and Schneider should not be combined.

Further, the Dutta and Schneider do not contain any suggestion, either express or implied, that they be combined, or that they be combined in the manner suggested by the Examiner. Accordingly, Dutta and Schneider should not be combined.

Still further, it seems likely that it would be necessary to make modifications that are not taught or suggested in the prior art in order to combine the references in the manner suggested by the Examiner. Accordingly, Dutta and Schneider should not be combined.

**(2) In Addition, Any Combination of Dutta and Schneider Does Not Teach or Suggest All of the Limitations of the Independent Claims**

Furthermore, even if Dutta and Schneider are combined, which does not even seem appropriate, the combination still does not teach or suggest all of the limitations of the independent claims.

**Claim 53** recites a method comprising “*a first peer node receiving a peer-to-peer network inquiry for data from a second peer node, the peer-to-peer network inquiry specifying a format for the data that can be processed by the second peer node; the first peer node transcoding the data before transmitting the data to the second peer node, wherein the transcoding includes converting the data into the specified format that can be processed by the second peer node; and transmitting the data to the second peer node in a transport specification as specified by the second peer node*”. Any combination of Dutta and Schneider, which combination does not even seem appropriate, still does not teach or suggest a peer-to-peer network inquiry that specifies a format for the data that can be processed by the second peer node.

Dutta does not teach or suggest a peer-to-peer network inquiry that specifies a format for the data that can be processed by the second peer node. SSSS does not discuss peer-to-peer networks or even mention the word “peer”. Accordingly, any possible combination of Dutta and Schneider, does not teach or suggest the limitations of independent claim 53.

For at least one or more of the reasons discussed above, claim 53 and its dependent claims are believed to be allowable. Independent claims 42 and 67, and their respective dependent claims, are believed to be allowable for one or more reasons similar to those discussed above.

### **35 U.S.C. §103(a) Rejection – Dutta, Schneider, and Horn**

The Examiner has rejected claims 46-47, 51, 57-59, 62, 64, 72-74 and 77 under 35 U.S.C. §103(a) as being unpatentable over Dutta, Schneider, and U.S. Patent Application No. 2001/0022000 issued to Horn et al. (hereinafter “Horn”).

As discussed above, Dutta and Schneider should not be combined, and furthermore the independent claims are allowable over any possible combination of Dutta and Schneider. Applicants therefore do not address other aspects of the propriety of the rejections of these dependent claims.

**35 U.S.C. §103(a) Rejection -- Dutta, Schneider, and Neogi**

The Examiner has rejected claim 71 under 35 U.S.C. §103(a) as being unpatentable over Dutta and Schneider and U.S. Patent 6,650,620 issued to Neogi et al. (hereinafter referred to as "Neogi").

As discussed above, Dutta and Schneider should not be combined, and furthermore the independent claims are allowable over any possible combination of Dutta and Schneider. Applicants therefore do not address other aspects of the propriety of the rejections of these dependent claims.

### Conclusion

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance. Applicants respectfully request that the rejections be withdrawn and the claims be allowed at the earliest possible date.

### Request For Telephone Interview

The Examiner is invited to call Brent E. Vecchia at (303) 740-1980 if there remains any issue with allowance of the case.

### Request For An Extension Of Time

The Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

### Charge Our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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